

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re: _____)	Chapter 11
)	
CIRCUIT CITY STORES, INC., <i>et al.</i> , ¹)	Case No. 08-35653-KRH
)	
Debtors.)	Jointly Administered

**OBJECTION OF CORMARK INC.
TO DEBTORS' PROPOSED SALE OF ASSETS OR BUSINESSES
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS,
AND REQUEST FOR ADEQUATE PROTECTION OF INTEREST IN PROPERTY**

Cormark Inc. ("Cormark"), by counsel, objects to the Debtors' proposed sale of assets or businesses free and clear of liens, claims, encumbrances, and interests, stating as follows:

1. This Objection is directed to relief requested in the following motion filed by the Debtors on January 9, 2009 (the "Motion"):

"Debtors' Motion For Orders Pursuant To Bankruptcy Code Sections 105, 363 and 364 (I) (A) Approving Procedures In Connection With Sale Of All Or Substantially All Of The Business Or Additional Post-Petition Financing For The Business, (B) Authorizing Debtors To Enter Into Stalking Horse Or Financing Agreements In Connection With Going Concern Transactions Or Stalking Horse Agreements In Connection With Store Closing And Miscellaneous Asset Sales, (C) Approving The Payment Of Termination Fees In Connection Therewith, And (D) Setting Auction And Hearing Dates, (II) Approving Sale Of Debtors' Assets Free And Clear Of All Interests, and (III) Granting Related Relief."

¹ The Debtors in these jointly administered are the following: Circuit City Stores, Inc.; Circuit City Stores West Coast, Inc.; InterTAN, Inc.; Ventoux International, Inc.; Circuit City Purchasing Company, LLC; CC Aviation, LLC; CC Distribution Company of Virginia, Inc.; Circuit City Properties, LLC; Kinzer Technology, LLC; Patapsco Designs, Inc.; Sky Venture Corp.; XSStuff, LLC; Courchevel, LLC; Circuit City Stores PR, LLC; Prahs, Inc.; Orbyx Electronics, LLC; Mayland MN, LLC; and Abbott Advertising Agency, Inc.

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2. In relevant part, the Debtors request in the Motion authorization to sell some or all of their assets or businesses through a going concern transaction, store closing sales, or miscellaneous asset sales and for any sale to be free and clear of all liens, claims, encumbrances, and other interests. The Debtors propose that any such liens, claims, etc. attach to the net proceeds of any sale.

3. Cormark served a timely reclamation demand on debtors Circuit City Stores, Inc. and Circuit City Purchasing Company, LLC (the "Reclamation Demand") in conformity with the reclamation procedures approved by this Court in the Debtors' Chapter 11 cases. Copies of the Reclamation Demand, which include initial demand letters dated November 28, 2008, and supplementary demand letters dated December 1, 2008, are attached (albeit without the attachments to the supplementary demand letters, which are lengthy) as **Exhibit A**.

4. The Reclamation Demand is in the amount of \$205,574.28 and covers display equipment (e.g. cabinets), graphics, and related accessories that the Debtors employ to display their MP3 inventory to the public at fifty-seven (57) Circuit City stores (the "Goods"). Those stores have the following store numbers:

505	3126	3575
516	3127	3603
532	3131	3604
533	3167	3606
534	3169	3607
805	3171	3608
890	3175	3611
910	3176	3614
1600	3177	3621
3106	3181	3622
3111	3186	3626
3112	3187	3629

3113	3189	3630
3118	3194	3631
3120	3196	3632
3121	3198	3634
3123	3418	3637
3124	3507	3654
3125	3549	3710

5. Upon information and belief, the Goods are not encumbered by any lien or other interest that has priority over the Reclamation Demand. In this regard, the Debtors' pre-petition financing with its DIP lender appears to involve liens on only the Debtors' accounts, inventory, deposit accounts, documents relating to inventory, and chattel paper and other instruments and rights arising from the sale of inventory. Such liens do not encumber the Goods.

6. Also upon information and belief, all of the Goods remain in the possession of debtor Circuit City Stores, Inc. or Circuit City Purchasing Company, LLC and continue to be used to display MP3 inventory.

7. The Order entered by this Court on November 13, 2008, establishing procedures for reclamation demands provides in relevant part that the Debtors have one hundred and twenty (120) days to notify reclamation claimants of the allowed amount, if any, of reclamation demands. The Debtors have not yet contacted Cormark about the Reclamation Demand.

8. As of the filing of this Motion, the Debtors have not filed papers with the Court indicating that they have received a bid that would involve conveyance of the Goods to a third-party buyer. However, upon information and belief, the Debtors may eventually submit one or more such bids to the Court. Accordingly, Cormark files this Objection and Request for Adequate Protection in anticipation that the Debtors will receive such a bid.

Objection and Relief Requested

9. Cormark objects to any sale that involves conveyance of the Goods and/or any rights the Debtors may have in the Goods to a third party free and clear of Cormark's rights and without contemporaneous payment in full to Cormark of the \$205,574.28 demanded in the Reclamation Demand.

10. Under Bankruptcy Code § 546(c) and § 2-702 of the Uniform Commercial Code, Cormark is entitled to return of the Goods. The Debtors' only interest in the Goods at this time is a mere possessory interest, which is subject and subordinate to Cormark's right to have the Goods returned due to non-payment.

11. Moreover, no proposed buyer of the Goods from the Debtor could qualify as a "good faith purchaser" of the Goods insofar as, without limitation, any proposed buyer is on notice of Cormark's reclamation rights by virtue of the Reclamation Demand and this Objection and Request for Adequate Protection. See, e.g., Ranchers & Farmers Livestock Auction Co. v. Honey, 38 Colo.App. 69, 74, 552 P.2d 313 (Colo.App. 1976) ("But since they acted with notice of plaintiff's claim to the livestock, they did not acquire the status of a good faith purchaser and cannot prevent plaintiff from asserting its right of reclamation.").

12. Further, Cormark requests adequate protection of its interest in the Goods pursuant to Bankruptcy Code § 363(e). Such adequate protection might include, for example, an administrative expense claim in the amount of \$205,574.28.

13. Cormark has not filed a proof of claim in the Debtors' Chapter 11 cases, and this Objection and Request for Adequate Protection is not, and should not be construed as, a waiver, release, or other relinquishment of other rights that Cormark has or may have, including but not

limited to rights as a purchase money secured creditor with respect to the products Cormark sold to the Debtors. Cormark reserves all of its rights.

14. Cormark respectfully requests that the Court waive the requirement that a separate memorandum of law be filed with respect to this Objection.

WHEREFORE, Cormark objects to the Motion, requests adequate protection of its interest in the Goods, and requests such other and further relief as this Court deems appropriate.

CORMARK INC.

By: /s/ Neil E. McCullagh
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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2009, a copy of the foregoing Objection was served on the parties on the attached Service List via electronic means through the Court's ECF noticing system or by regular U.S. first class mail.

/s/ Neil E. McCullagh

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